

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 1393

6 By: Allen

7 COMMITTEE SUBSTITUTE

8 An Act relating to tax credits; amending 68 O.S.  
9 2011, Sections 2357.4, as amended by Section 1,  
10 Chapter 336, O.S.L. 2015, 2357.41, 2357.46 and  
11 2357.104 (68 O.S. Supp. 2015, Section 2357.4), which  
12 relate to credits for certain investment and  
13 expenditure; modifying the time period for carrying  
14 forward unused credits for certain capital investment  
15 and employment, expenditures for rehabilitation of  
16 historic buildings, expenditures for construction of  
17 energy-efficient residential property and  
18 expenditures to reconstruct or replace certain  
19 railroad property; and providing an effective date.

20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.4, as  
22 amended by Section 1, Chapter 336, O.S.L. 2015 (68 O.S. Supp. 2015,  
23 Section 2357.4), is amended to read as follows:

24 Section 2357.4. A. Except as otherwise provided in subsection  
F of Section 3658 of this title and in subsections J and K of this  
section, for taxable years beginning after December 31, 1987, there  
shall be allowed a credit against the tax imposed by Section 2355 of  
this title for:

1           1. Investment in qualified depreciable property placed in  
2 service during those years for use in a manufacturing operation, as  
3 defined in Section 1352 of this title, which has received a  
4 manufacturer exemption permit pursuant to the provisions of Section  
5 1359.2 of this title or a qualified aircraft maintenance or  
6 manufacturing facility as defined in Section 1357 of this title in  
7 this state or a qualified web search portal as defined in Section  
8 1357 of this title; or

9           2. A net increase in the number of full-time-equivalent  
10 employees in a manufacturing operation, as defined in Section 1352  
11 of this title, which has received a manufacturer exemption permit  
12 pursuant to the provisions of Section 1359.2 of this title or a  
13 qualified aircraft maintenance or manufacturing facility defined in  
14 Section 1357 of this title in this state or in a qualified web  
15 search portal as defined in Section 1357 of this title including  
16 employees engaged in support services.

17           B. Except as otherwise provided in subsection F of Section 3658  
18 of this title and in subsections J and K of this section, for  
19 taxable years beginning after December 31, 1998, there shall be  
20 allowed a credit against the tax imposed by Section 2355 of this  
21 title for:

22           1. Investment in qualified depreciable property with a total  
23 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)  
24 within three (3) years from the date of initial qualifying

1 expenditure and placed in service in this state during those years  
2 for use in the manufacture of products described by any Industry  
3 Number contained in Division D of Part I of the Standard Industrial  
4 Classification (SIC) Manual, latest revision; or

5 2. A net increase in the number of full-time-equivalent  
6 employees in this state engaged in the manufacture of any goods  
7 identified by any Industry Number contained in Division D of Part I  
8 of the Standard Industrial Classification (SIC) Manual, latest  
9 revision, if the total cost of qualified depreciable property placed  
10 in service by the business entity within the state equals or exceeds  
11 Forty Million Dollars (\$40,000,000.00) within three (3) years from  
12 the date of initial qualifying expenditure.

13 C. The business entity may claim the credit authorized by  
14 subsection B of this section for expenditures incurred or for a net  
15 increase in the number of full-time-equivalent employees after the  
16 business entity provides proof satisfactory to the Oklahoma Tax  
17 Commission that the conditions imposed pursuant to paragraph 1 or  
18 paragraph 2 of subsection B of this section have been satisfied.

19 D. If a business entity fails to expend the amount required by  
20 paragraph 1 or paragraph 2 of subsection B of this section within  
21 the time required, the business entity may not claim the credit  
22 authorized by subsection B of this section but shall be allowed to  
23 claim a credit pursuant to subsection A of this section if the  
24 requirements of subsection A of this section are met with respect to

1 the investment in qualified depreciable property or net increase in  
2 the number of full-time-equivalent employees.

3 E. The credit provided for in subsection A of this section, if  
4 based upon investment in qualified depreciable property, shall not  
5 be allowed unless the investment in qualified depreciable property  
6 is at least Fifty Thousand Dollars (\$50,000.00). The credit  
7 provided for in subsection A or B of this section shall not be  
8 allowed if the applicable investment is the direct cause of a  
9 decrease in the number of full-time-equivalent employees. Qualified  
10 property shall be limited to machinery, fixtures, equipment,  
11 buildings or substantial improvements thereto, placed in service in  
12 this state during the taxable year. The taxable years for which the  
13 credit may be allowed if based upon investment in qualified  
14 depreciable property shall be measured from the year in which the  
15 qualified property is placed in service. If the credit provided for  
16 in subsection A or B of this section is calculated on the basis of  
17 the cost of the qualified property, the credit shall be allowed in  
18 each of the four (4) subsequent years. If the qualified property on  
19 which a credit has previously been allowed is acquired from a  
20 related party, the date such property is placed in service by the  
21 transferor shall be considered to be the date such property is  
22 placed in service by the transferee, for purposes of determining the  
23 aggregate number of years for which credit may be allowed.

24

1 F. The credit provided for in subsection A or B of this  
2 section, if based upon an increase in the number of full-time-  
3 equivalent employees, shall be allowed in each of the four (4)  
4 subsequent years only if the level of new employees is maintained in  
5 the subsequent year. In calculating the credit by the number of new  
6 employees, only those employees whose paid wages or salary were at  
7 least Seven Thousand Dollars (\$7,000.00) during each year the credit  
8 is claimed shall be included in the calculation. Provided, that the  
9 first year a credit is claimed for a new employee, such employee may  
10 be included in the calculation notwithstanding paid wages of less  
11 than Seven Thousand Dollars (\$7,000.00) if the employee was hired in  
12 the last three quarters of the tax year, has wages or salary which  
13 will result in annual paid wages in excess of Seven Thousand Dollars  
14 (\$7,000.00) and the taxpayer submits an affidavit stating that the  
15 employee's position will be retained in the following tax year and  
16 will result in the payment of wages in excess of Seven Thousand  
17 Dollars (\$7,000.00). The number of new employees shall be  
18 determined by comparing the monthly average number of full-time  
19 employees subject to Oklahoma income tax withholding for the final  
20 quarter of the taxable year with the corresponding period of the  
21 prior taxable year, as substantiated by such reports as may be  
22 required by the Tax Commission.

23 G. The credit allowed by subsection A of this section shall be  
24 the greater amount of either:

1 1. One percent (1%) of the cost of the qualified property in  
2 the year the property is placed in service; or

3 2. Five Hundred Dollars (\$500.00) for each new employee. No  
4 credit shall be allowed in any taxable year for a net increase in  
5 the number of full-time-equivalent employees if such increase is a  
6 result of an investment in qualified depreciable property for which  
7 an income tax credit has been allowed as authorized by this section.

8 H. The credit allowed by subsection B of this section shall be  
9 the greater amount of either:

10 1. Two percent (2%) of the cost of the qualified property in  
11 the year the property is placed in service; or

12 2. One Thousand Dollars (\$1,000.00) for each new employee.

13 No credit shall be allowed in any taxable year for a net  
14 increase in the number of full-time-equivalent employees if such  
15 increase is a result of an investment in qualified depreciable  
16 property for which an income tax credit has been allowed as  
17 authorized by this section.

18 I. 1. Except as provided by subsection G of Section 3658 of  
19 this title and paragraph 2 of this subsection, any credits allowed  
20 in any tax year which ends before January 1, 2017, but not used in  
21 any taxable year, l may be carried over in order as follows:

22 1.

23 a. ~~To~~ to each of the four (4) years following the year of  
24 qualification, l

1       ~~2.~~

2           b.   ~~To~~ to the extent not used in those years in order to  
3                   each of the fifteen (15) years following the initial  
4                   five-year period~~+~~, and

5       ~~3.~~

6           c.   ~~If~~ if a C corporation that otherwise qualified for the  
7                   credits under subsection A of this section  
8                   subsequently changes its operating status to that of a  
9                   pass-through entity which is being treated as the same  
10                  entity for federal tax purposes, the credits will  
11                  continue to be available as if the pass-through entity  
12                  had originally qualified for the credits subject to  
13                  the limitations of this section.

14           To the extent not used in paragraphs 1 and 2 of this subsection,  
15           such credits from qualified depreciable property placed in service  
16           on or after January 1, 2000, may be utilized in any subsequent tax  
17           years after the initial twenty-year period.

18           2. Any credits allowed for activities which occur during tax  
19           years beginning on or after January 1, 2017, may be carried over in  
20           order to each of the three (3) years following the year of  
21           qualification.

22           J. No credit otherwise authorized by the provisions of this  
23           section may be claimed for any event, transaction, investment,  
24           expenditure or other act occurring on or after July 1, 2010, for

1 which the credit would otherwise be allowable until the provisions  
2 of this subsection shall cease to be operative on July 1, 2012.  
3 Beginning July 1, 2012, the credit authorized by this section may be  
4 claimed for any event, transaction, investment, expenditure or other  
5 act occurring on or after July 1, 2010, according to the provisions  
6 of this section; provided, credits accrued during the period from  
7 July 1, 2010, through June 30, 2012, shall be limited to a period of  
8 two (2) taxable years. The credit shall be limited in each taxable  
9 year to fifty percent (50%) of the total amount of the accrued  
10 credit. Any tax credits which accrue during the period of July 1,  
11 2010, through June 30, 2012, may not be claimed for any period prior  
12 to the taxable year beginning January 1, 2012. No credits which  
13 accrue during the period of July 1, 2010, through June 30, 2012, may  
14 be used to file an amended tax return for any taxable year prior to  
15 the taxable year beginning January 1, 2012.

16 K. Beginning January 1, 2017, except with respect to tax  
17 credits allowed from investment or job creation occurring prior to  
18 January 1, 2017, the credits authorized by this section shall not be  
19 allowed for investment or job creation in electric power generation  
20 by means of wind as described by the North American Industry  
21 Classification System, No. 221119.

22 SECTION 2. AMENDATORY 68 O.S. 2011, Section 2357.41, is  
23 amended to read as follows:

24

1 Section 2357.41. A. Except as otherwise provided by subsection  
2 I of this section, for tax years beginning after December 31, 2000,  
3 there shall be allowed a credit against the tax imposed by Sections  
4 2355 and 2370 of this title or that portion of the tax imposed by  
5 Section 624 or 628 of Title 36 of the Oklahoma Statutes that would  
6 otherwise have been apportioned to the General Revenue Fund for  
7 qualified rehabilitation expenditures incurred in connection with  
8 any certified historic hotel or historic newspaper plant building  
9 located in an increment or incentive district created pursuant to  
10 the Local Development Act or for qualified rehabilitation  
11 expenditures incurred after January 1, 2006, in connection with any  
12 certified historic structure.

13 B. The amount of the credit shall be one hundred percent (100%)  
14 of the federal rehabilitation credit provided for in Section 47 of  
15 Title 26 of the United States Code. The credit authorized by this  
16 section may be claimed at any time after the relevant local  
17 governmental body responsible for doing so issues a certificate of  
18 occupancy or other document that is a precondition for the  
19 applicable use of the building or structure that is the basis upon  
20 which the credit authorized by this section is claimed.

21 C. All requirements with respect to qualification for the  
22 credit authorized by Section 47 of Title 26 of the United States  
23 Code shall be applicable to the credit authorized by this section.

24

1 D. ~~If~~ 1. For credits allowed for any tax year which ends  
2 before January 1, 2017, if the credit allowed pursuant to this  
3 section exceeds the amount of income taxes due or if there are no  
4 state income taxes due on the income of the taxpayer, the amount of  
5 the credit allowed but not used in any taxable year may be carried  
6 forward as a credit against subsequent income tax liability for a  
7 period not exceeding ten (10) years following the qualified  
8 expenditures.

9 2. For credits allowed for any tax year which begins on or  
10 after January 1, 2017, if the credit allowed pursuant to this  
11 section exceeds the amount of income taxes due or if there are no  
12 state income taxes due on the income of the taxpayer, the amount of  
13 the credit allowed but not used in any taxable year may be carried  
14 forward as a credit against subsequent income tax liability for a  
15 period not exceeding three (3) years following the qualified  
16 expenditures.

17 E. All rehabilitation work to which the credit may be applied  
18 shall be reviewed by the State Historic Preservation Office which  
19 will in turn forward the information to the National Park Service  
20 for certification in accordance with 36 C.F.R., Part 67. A  
21 certified historic structure may be rehabilitated for any lawful use  
22 or uses, including without limitation mixed uses and still retain  
23 eligibility for the credit provided for in this section.  
24

1 F. The amount of the credit allowed for any credit claimed for  
2 a certified historic hotel or historic newspaper plant building or  
3 any certified historic structure, but not used, shall be freely  
4 transferable, in whole or in part, to subsequent transferees at any  
5 time during the five (5) years following the year of qualification.  
6 Any person to whom or to which a tax credit is transferred shall  
7 have only such rights to claim and use the credit under the terms  
8 that would have applied to the entity by whom or by which the tax  
9 credit was transferred. The provisions of this subsection shall not  
10 limit the ability of a tax credit transferee to reduce the tax  
11 liability of the transferee regardless of the actual tax liability  
12 of the tax credit transferor for the relevant taxable period. The  
13 transferor of the credit and the transferee shall jointly file a  
14 copy of the written credit transfer agreement with the Oklahoma Tax  
15 Commission within thirty (30) days of the transfer. Such filing of  
16 the written credit transfer agreement with the Oklahoma Tax  
17 Commission shall perfect such transfer. The written agreement shall  
18 contain the name, address and taxpayer identification number of the  
19 parties to the transfer, the amount of credit being transferred, the  
20 year the credit was originally allowed to the transferor, the tax  
21 year or years for which the credit may be claimed, and a  
22 representation by the transferor that the transferor has neither  
23 claimed for its own behalf nor conveyed such credits to any other  
24 transferee. The Tax Commission shall develop a standard form for

1 use by subsequent transferees of the credit demonstrating  
2 eligibility for the transferee to reduce its applicable tax  
3 liabilities resulting from ownership of the credit. The Tax  
4 Commission shall develop a system to record and track the transfers  
5 of the credit and certify the ownership of the credit and may  
6 promulgate rules to permit verification of the validity and  
7 timeliness of a tax credit claimed upon a tax return pursuant to  
8 this subsection but shall not promulgate any rules which unduly  
9 restrict or hinder the transfers of such tax credit.

10 G. Notwithstanding any other provisions in this section, on or  
11 after January 1, 2009, if a credit allowed pursuant to this section  
12 which has been transferred is subsequently reduced as the result of  
13 an adjustment by the Internal Revenue Service, Tax Commission, or  
14 any other applicable government agency, only the transferor  
15 originally allowed the credit and not any subsequent transferee of  
16 the credit, shall be held liable to repay any amount of disallowed  
17 credit.

18 H. As used in this section:

19 1. "Certified historic hotel or historic newspaper plant  
20 building" means a hotel or newspaper plant building that is listed  
21 on the National Register of Historic Places within thirty (30)  
22 months of taking the credit pursuant to this section.

23 2. "Certified historic structure" means a building that is  
24 listed on the National Register of Historic Places within thirty

1 (30) months of taking the credit pursuant to this section or a  
2 building located in Oklahoma which is certified by the State  
3 Historic Preservation Office as contributing to the historic  
4 significance of a certified historic district listed on the National  
5 Register of Historic Places, or a local district that has been  
6 certified by the State Historic Preservation Office as eligible for  
7 listing in the National Register of Historic Places; and

8 3. "Qualified rehabilitation expenditures" means capital  
9 expenditures that qualify for the federal rehabilitation credit  
10 provided in Section 47 of Title 26 of the United States Code and  
11 that were paid after December 31, 2000. Qualified rehabilitation  
12 expenditures do not include capital expenditures for nonhistoric  
13 additions except an addition that is required by state or federal  
14 regulations that relate to safety or accessibility. In addition,  
15 qualified rehabilitation expenditures do not include expenditures  
16 related to the cost of acquisition of the property.

17 I. No credit otherwise authorized by the provisions of this  
18 section may be claimed for any event, transaction, investment,  
19 expenditure or other act occurring on or after July 1, 2010, for  
20 which the credit would otherwise be allowable until the provisions  
21 of this subsection shall cease to be operative on July 1, 2012.  
22 Beginning July 1, 2012, the credit authorized by this section may be  
23 claimed for any event, transaction, investment, expenditure or other  
24 act occurring on or after July 1, 2010, according to the provisions

1 of this section. Any tax credits which accrue during the period of  
2 July 1, 2010, through June 30, 2012, may not be claimed for any  
3 period prior to the taxable year beginning January 1, 2012. No  
4 credits which accrue during the period of July 1, 2010, through June  
5 30, 2012, may be used to file an amended tax return for any taxable  
6 year prior to the taxable year beginning January 1, 2012.

7 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2357.46, is  
8 amended to read as follows:

9 Section 2357.46. A. Except as otherwise provided by subsection  
10 G of this section, for tax years beginning after December 31, 2005,  
11 there shall be allowed a credit against the tax imposed by Section  
12 2355 of Title 68 of Oklahoma Statutes for eligible expenditures  
13 incurred by a contractor in the construction of energy efficient  
14 residential property of two thousand (2,000) square feet or less.  
15 The amount of the credit shall be based upon the following:

16 1. For any eligible energy efficient residential property  
17 constructed and certified as forty percent (40%) or more above the  
18 International Energy Conservation Code 2003 and any supplement in  
19 effect at the time of completion, the amount of the credit shall be  
20 equal to the eligible expenses, not to exceed Four Thousand Dollars  
21 (\$4,000.00) for the taxpayer who is the contractor; and

22 2. For any eligible energy efficient residential property  
23 constructed and certified as between twenty percent (20%) and  
24 thirty-nine percent (39%) above the International Energy

1 Conservation Code 2003 and any supplement in effect at the time of  
2 completion, the credit shall be equal to the eligible expenditures,  
3 not to exceed Two Thousand Dollars (\$2,000.00) for the taxpayer who  
4 is the contractor.

5 B. As used in this section:

6 1. "Eligible expenditure" means any:

7 a. energy efficient heating or cooling system,

8 b. insulation material or system which is specifically

9 and primarily designed to reduce the heat gain or loss

10 of a residential property when installed in or on such

11 property,

12 c. exterior windows, including skylights,

13 d. exterior doors, and

14 e. any metal roof installed on a residential property,

15 but only if such roof has appropriate pigmented

16 coatings which are specifically and primarily designed

17 to reduce the heat gain of such dwelling unit and

18 which meet Energy Star program requirements;

19 2. "Contractor" means the taxpayer who constructed the

20 residential property or manufactured home, or if more than one

21 taxpayer qualifies as the contractor, the primary contractor; and

22 3. "Eligible energy efficient residential property" means a

23 newly constructed residential property or manufactured home property

24 which is located in the State of Oklahoma and substantially complete

1 after December 31, 2005, and which is two thousand (2,000) square  
2 feet or less:

3 a. for the credit provided pursuant to paragraph 1 of  
4 subsection A of this section, which is certified by an  
5 accredited Residential Energy Services Network  
6 Provider using the Home Energy Rating System to have:

7 (1) a level of annual heating and cooling energy  
8 consumption which is at least forty percent (40%)  
9 below the annual level of heating and cooling  
10 energy consumption of a comparable residential  
11 property constructed in accordance with the  
12 standards of Chapter 4 of the 2003 International  
13 Energy Conservation Code, as such code is in  
14 effect on ~~the effective date of this act~~ November  
15 1, 2005,

16 (2) heating and cooling equipment efficiencies which  
17 correspond to the minimum allowed under the  
18 regulations established by the Department of  
19 Energy pursuant to the National Appliance Energy  
20 Conservation Act of 1987 and in effect at the  
21 time of construction of the property, and

22 (3) building envelope component improvements which  
23 account for at least one-fifth of the reduced  
24

1 annual heating and cooling energy consumption  
2 levels,

3 b. for the credit provided pursuant to paragraph 2 of  
4 subsection A of this section, which is certified by an  
5 accredited Residential Energy Services Network  
6 Provider using the Home Energy Rating System to have:

7 (1) a level of annual heating and cooling energy  
8 consumption which is between twenty percent (20%)  
9 and thirty-nine percent (39%) below the annual  
10 level of heating and cooling energy consumption  
11 of a comparable residential property constructed  
12 in accordance with the standards of Chapter 4 of  
13 the 2003 International Energy Conservation Code,  
14 as such code is in effect on ~~the effective date~~  
15 ~~of this act~~ November 1, 2005,

16 (2) heating and cooling equipment efficiencies which  
17 correspond to the minimum allowed under the  
18 regulations established by the Department of  
19 Energy pursuant to the National Appliance Energy  
20 Conservation Act of 1987 and in effect at the  
21 time of construction of the property, and

22 (3) building envelope component improvements which  
23 account for at least one-third of the reduced  
24

1 annual heating and cooling energy consumption  
2 levels.

3 C. The credit provided for in subsection A of this section may  
4 only be claimed once for the contractor of any eligible residential  
5 energy efficient property during the taxable year when the property  
6 is substantially complete.

7 D. ~~¶~~ 1. For credits allowed in any tax year which ends before  
8 January 1, 2017, if the credit allowed pursuant to this section  
9 exceeds the amount of income taxes due or if there are no state  
10 income taxes due on the income of the taxpayer, the amount of credit  
11 allowed but not used in any taxable year may be carried forward as a  
12 credit against subsequent income tax liability for a period not  
13 exceeding four (4) years following the qualified expenditures.

14 2. For credits allowed in any tax year which begins on or after  
15 January 1, 2017, if the credit allowed pursuant to this section  
16 exceeds the amount of income taxes due or if there are no state  
17 income taxes due on the income of the taxpayer, the amount of credit  
18 allowed but not used in any taxable year may be carried forward as a  
19 credit against subsequent income tax liability for a period not  
20 exceeding three (3) years following the qualified expenditures.

21 E. For credits earned on or after ~~the effective date of this~~  
22 ~~act~~ August 25, 2006, the credits authorized by this section shall be  
23 freely transferable to subsequent transferees.  
24

1 F. The Oklahoma Tax Commission shall promulgate rules necessary  
2 to implement this act.

3 G. No credit otherwise authorized by the provisions of this  
4 section may be claimed for any event, transaction, investment,  
5 expenditure or other act occurring on or after July 1, 2010 for  
6 which the credit would otherwise be allowable. The provisions of  
7 this subsection shall cease to be operative on July 1, 2012.  
8 Beginning July 1, 2012, the credit authorized by this section may be  
9 claimed for any event, transaction, investment, expenditure or other  
10 act occurring on or after July 1, 2012, according to the provisions  
11 of this section.

12 SECTION 4. AMENDATORY 68 O.S. 2011, Section 2357.104, is  
13 amended to read as follows:

14 Section 2357.104. A. Except as otherwise provided by  
15 subsection G of this section, for taxable years beginning after  
16 December 31, 2005, there shall be allowed a credit against the tax  
17 imposed by Section 2355 of this title equal to fifty percent (50%)  
18 of an eligible taxpayer's qualified railroad reconstruction or  
19 replacement expenditures.

20 B. 1. Except as provided in paragraph 2 of this subsection,  
21 the amount of the credit shall be limited to the product of Five  
22 Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars  
23 (\$2,000.00) for tax year 2008 and subsequent tax years and the  
24

1 number of miles of railroad track owned or leased within this state  
2 by the eligible taxpayer as of the close of the taxable year.

3 2. In tax year 2009 and subsequent tax years, a taxpayer may  
4 elect to increase the limit provided in paragraph 1 of this  
5 subsection to an amount equal to three times the limit specified in  
6 paragraph 1 of this subsection for qualified expenditures made in  
7 the tax year, provided the taxpayer may only claim one third (1/3)  
8 of the credit in any one taxable period.

9 C. The credit allowed pursuant to subsection A of this section  
10 but not used shall be freely transferable, by written agreement, to  
11 subsequent transferees at any time during the five (5) years  
12 following the year of qualification. An eligible transferee shall  
13 be any taxpayer subject to the tax imposed by Section 2355 of this  
14 title. The person originally allowed the credit and the subsequent  
15 transferee shall jointly file a copy of the written credit transfer  
16 agreement with the Oklahoma Tax Commission within thirty (30) days  
17 of the transfer. The written agreement shall contain the name,  
18 address and taxpayer identification number of the parties to the  
19 transfer, the amount of credit being transferred, the year the  
20 credit was originally allowed to the transferring person and the tax  
21 year or years for which the credit may be claimed. The Tax  
22 Commission shall promulgate rules to permit verification of the  
23 timeliness of a tax credit claimed upon a tax return pursuant to  
24 this subsection but shall not promulgate any rules which unduly

1 restrict or hinder the transfers of such tax credit. The Department  
2 of Transportation shall promulgate rules to permit verification of  
3 the eligibility of an eligible taxpayer's expenditures for the  
4 purpose of claiming the credit. The rules shall provide for the  
5 approval of qualified railroad reconstruction or replacement  
6 expenditures prior to commencement of a project and provide a  
7 certificate of verification upon completion of a project that uses  
8 qualified railroad reconstruction or replacement expenditures. The  
9 certificate of verification shall satisfy all requirements of the  
10 Tax Commission pertaining to the eligibility of the person claiming  
11 the credit.

12 D. 1. Any credits allowed for any tax year which ends before  
13 January 1, 2017, pursuant to the provisions of subsection A of this  
14 section, but not used in any tax year, may be carried over in order  
15 to each of the five (5) years following the year of qualification.

16 2. Any credits allowed for any tax year which begins on or  
17 after January 1, 2017, pursuant to the provisions of subsection A of  
18 this section, but not used in any tax year, may be carried over in  
19 order to each of the three (3) years following the year of  
20 qualification.

21 E. A taxpayer who elects to increase the limitation on the  
22 credit under paragraph 2 of subsection B of this section shall not  
23 be granted additional credits under subsection A of this section  
24 during the period of such election.

1 F. As used in this section:

2 1. "Class II and Class III railroad" means a railroad that is  
3 classified by the United States Surface Transportation Board as a  
4 Class II or Class III railroad;

5 2. "Eligible taxpayer" means any Class II or Class III  
6 railroad; and

7 3. "Qualified railroad reconstruction or replacement  
8 expenditures" means expenditures for:

- 9 a. reconstruction or replacement of railroad  
10 infrastructure including track, roadbed, bridges,  
11 industrial leads and track-related structures owned or  
12 leased by a Class II or Class III railroad as of  
13 January 1, 2006, or  
14 b. new construction of industrial leads, switches, spurs  
15 and sidings and extensions of existing sidings by a  
16 Class II or Class III railroad.

17 G. No credit otherwise authorized by the provisions of this  
18 section may be claimed for any event, transaction, investment,  
19 expenditure or other act occurring on or after July 1, 2010, for  
20 which the credit would otherwise be allowable. The provisions of  
21 this subsection shall cease to be operative on July 1, 2012.  
22 Beginning July 1, 2012, the credit authorized by this section may be  
23 claimed for any event, transaction, investment, expenditure or other  
24

1 act occurring on or after July 1, 2012, according to the provisions  
2 of this section.

3 SECTION 5. This act shall become effective November 1, 2016.

4

5 55-2-3084 JCR 2/19/2016 2:49:43 PM

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24